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No. 88-1600

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Petitioners,
v.
DAVID MOLKO and TRACY LEAL,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of California

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF SOCIETY FOR THE SCIENTIFIC STUDY OF RELIGION, AMERICAN SOCIOLOGICAL ASSOCIATION, MARTIN E. MARTY, WILLIAM D'ANTONIO, ROBERT S. ELLWOOD, JEFFREY K. HADDEN, FRANKLIN LITTELL, LARRY D. SHINN, BRYAN WILSON, HENDRICKA VANDE KEMP,

[Additional Amici Listed on Inside Cover]

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Society for the Scientific Study of Religion, The American Sociological Association and the individuals listed in note 2 *infra*, respectfully move for leave to file the attached brief *amicus curiae*. Petitioner has consented to the filing; respondents have not.

In this case, the California Supreme Court held that tort liability could constitutionally be imposed on the Unification Church for "brainwashing" two potential recruits "by subjecting them, without their knowledge or consent, to an intense program of coercive persuasion." Appendix to Petition for Certiorari ("Appendix") 13a). The Court acknowledged that this tort would infringe the free exercise of petitioner's religion, but concluded that the prevention of "brainwashing" constituted a compelling state interest sufficient to justify the infringement. The court reached this result notwithstanding its recog-

nition that the words and acts purportedly constituting the "brainwashing"—singing hymns, studying scripture, praying together—were sincere religious practices that occurred in a context devoid of fear, confinement or threats of violence. Thus, the crucial issue in this case is whether the State has a compelling interest in prohibiting nonviolent "brainwashing" by religious organizations.

Amici are groups [1] and individuals [2] professionally committed to the dispassionate application of scientific meth-

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[1] The Society for the Scientific Study of Religion ("SSSR") is an association dedicated to research and scholarly publications related to religious phenomena, including the consequences of religious belief on individual behavior, the impact of religious organizations on other social institutions, and the problems of continuity and change within religious groups. The Society now numbers 1,700 members from the following disciplines: anthropology, sociology, psychology, religious studies, theology, history and natural sciences, psychiatry, medicine, philosophy and ethics.

The American Sociological Association, founded in 1905, is an organization of persons interested in the research, teaching and application of sociology. It seeks to stimulate and improve research, instruction, and discussion and to encourage cooperative relations among persons engaged in the scientific study of society. It has 12,500 members in the United States and throughout the world.

[2] *Martin E. Marty* is a Professor at the Divinity School at the University of Chicago and the immediate past president of the American Academy of Religion. *William D'Antonio* is Executive Officer of The American Sociological Association, a professor emeritus of sociology at the University of Connecticut, and a past president of SSSR. *Robert S. Ellwood* is Director of the School of Religion of the University of Southern California. *Jeffrey K. Hadden* is a professor of sociology at the University of Virginia, a past president of ASR, and a past president of SSSR. *Franklin Littell* is a professor of religion emeritus at Temple University. *Larry D. Shinn* is a professor of religion and Dean of the College of Arts and Sciences at Bucknell University. *Bryan Wilson* is a reader in sociology at All Souls College, University of Oxford, England.

The following psychologists are members of the executive council of Division 36 of the American Psychological Association, Psy-

ods in the study of religion and other important social phenomena. Their collective accomplishments rank them

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chologists Interested In Religious Issues ("APA Division 36"): *Hendricka Vande Kemp*, President of APA Divison 36, and a professor at the Fuller Graduate School of Psychology, Fuller Theological Seminary; *Richard Gorsuch*, a professor at the Graduate School of Psychology, Fuller Theological Seminary; *Ralph Hood*, professor of psychology at the University of Tennessee; and *Bernard Spilka*, a professor of psychology at the University of Denver. In addition, *Richard Kahoe* is a past president of APA Division 36. *Newton Malony* is Director of Programs in the Integration of Psychology and Theology, Graduate School of Psychology, Fuller Theological Seminary, and a past president of APA Division 36. *Mary Jo Meadow* is a professor of psychology and director of religious studies at Mankato State University, Minnesota, and a past president of APA Division 36.

The following are members of the executive council of the Association for the Sociology of Religion ("ASR"): *James Beckford*, President of ASR and a professor of sociology at Loyola University, Chicago; *Eileen Barker* a professor of sociology and the former Dean of Undergraduate Studies of the London School of Economics; *David Bromley*, a professor of sociology at Virginia Commonwealth University; *Mary Rose Ebaugh*, an associate professor of sociology at the University of Houston; *Dean Hoge*, a professor of sociology at Catholic University of America; *Nancy Nason-Clark*, a professor of sociology at the University of New Brunswick; and *Robert Wuthnow*, a professor of sociology at Princeton University. In addition, *William R. Garrett* is a professor of sociology at St. Michael's College in Vermont, and a past president of ASR. *Benton Johnson* is a professor of sociology at the University of Oregon, and a past president of ASR. *James Richardson* is a professor of sociology and judicial studies at the University of Nevada, Reno, and a past president of ASR. *Wade Clark Roof*, is a professor of sociology at the University of Massachusetts, Amherst, and a former Executive Secretary of SSSR. *Rodney Stark* is a professor of sociology and comparative religion at the University of Washington, and a past president of ASR.

Joseph Fichter is a professor of sociology at Loyola University, New Orleans, and a Roman Catholic Priest, *Arthur L. Griel* is an associate professor of sociology at Alfred University. *Edward Lehman, Jr.* is a professor of sociology at the State University of New York, Brockport. *Richard S. Machalek* is a professor of sociology and department chair at the University of Wyoming.

as authoritative and distinguished experts on the integrity of social science generally, and on new religious movements in particular. In their consensus view, the allegation of "brainwashing" on which the California Supreme Court's theory of liability depended has no scientific validity. *No* methodologically sound studies support the theory, and many refute it. The purported risk

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Armand L. Mauss is a professor of sociology at Washington State University and editor of the Journal of the SSSR. *Arthur Parsons* is chairman of Department of Sociology and Anthropology at Smith College. *Thomas Robbins* is a member of the council of SSSR. *Anson D. Shupe* is chair of the department of sociology and anthropology at Indiana University—Purdue University. *David A. Snow* is a professor of sociology at the University of Arizona and Vice-President of the Society for the Study of Symbolic Interaction. *Stuart Wright* is a professor of sociology at Lamar University.

Joseph Bettis is a professor of religious studies at Western Washington University. *Durwood Foster* is a professor of Christian Theology at the Pacific School of Religion, Berkeley. *Phillip E. Hammond* is chairman of the religious studies department at the University of California, Santa Barbara, and a past president of SSSR. *Ray Hart* is Chairman of the Department of Religious Studies at the University of Montana. *Loyde Hartley* is a professor of religion and society at Lancaster Theological Seminary, and a former Dean of the Seminary. *James R. Lewis* is a teaching fellow at the University of North Carolina. *J. Gordon Melton* is Director of the Institute for the Study of American Religion, Santa Barbara. *Donald E. Miller* is a professor of religion at the University of Southern California, and is a former Director of the School of Religion. *Timothy Miller* is a professor of religious studies at the University of Kansas, and Chair of the New Religious Movements Group of the American Academy of Religion. *Huston Smith* is a professor of religion and adjunct professor of philosophy emeritus at Syracuse University. *Lowell D. Streiker* is a theologian, author and Chair of the United Church of Christ Spiritual Development Network.

Dick Anthony is a psychologist specializing in religion and mental health effects of new religious movements. *Hubert G. Locke* is a professor in the graduate school of government at the University of Washington, and Director of the William O. Douglas Institute. *John Young* is a psychiatrist at the Whitney Forensic Institute in Middletown, Connecticut, and a Roman Catholic Priest.

of "brainwashing" thus cannot justify the devastating infringement of petitioner's religious practices threatened by the decision below.

As scientists, scholars, and professional associations, *amici* firmly believe that the results of careful scientific research can assist courts faced with issues at the frontiers of human knowledge. *Amici* seek to participate in this case, however, because they also acknowledge a concomitant responsibility to be vigilant against the risk that legal decisions will be based on unfounded assumptions and allegations masquerading as science. Because that appears to be what happened in this case, *amici* wish to demonstrate the implausibility of the purportedly "scientific" claims at issue.[3]

For all the foregoing reasons, *amici* urge the Court to accept and file the attached brief *amicus curiae*.

Respectfully submitted,

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May 1, 1989

[3] The decision below was not an aberration. Some courts have properly rejected claims of "coercive persuasion," but others have not. *See, e.g., Peterson v. Sorlein*, 299 N.W.2d 123 (Minn. 1981); *Van Schaick v. Church of Scientology of California*, 535 F. Supp. 1125 (D. Mass. 1982). Other courts have declined to permit brainwashing to be used as a defense to charges based on "deprogramming." *E.g. Eilers v. Coy*, 582 F. Supp. 1093 (D. Minn. 1984). And still others have expressed some skepticism about the scientific basis for claims of brainwashing or coercive persuasion. *Cf. Kropinski v. World Plan Executive Council*, 853 F.2d 948, 956-957 (D.C. Cir. 1988).

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BRIEF AMICUS CURIAE

INTEREST OF AMICI

The interest of *amici* is described in the accompanying Motion for Leave to File Brief *Amicus Curiae*.

INTRODUCTION

This case squarely presents an important, unresolved question involving the scope of the First Amendment guarantee of the free exercise of religion: whether a

state may impose tort liability for the sincere, nonviolent conversion practices of a *bona fide* religion.[1]

The California Supreme Court repeatedly suggested that the gravamen of the present case was *fraud*: Unification Church members allegedly recruited Molko and Leal with tactics that concealed both the intent to recruit and the nature of the Church.[2] But the undisputed facts show, as the court below acknowledged, that both Molko and Leal knew the identity and nature of the Unification Church prior to choosing to affiliate. (Appendix 13a). And they were at no time subjected to threats of force or conditions of confinement. *Id.*[3] Accordingly, unless their decisions to affiliate were the result of externally imposed "coercive persuasion," Molko and Leal could not prove fraud in this case. This is because, as found by the two lower courts, they could not show either justifiable reliance on, or harm proximately caused by, the alleged initial misrepresentations.[4]

"Coercive persuasion" supplied the missing link in the court's chain of causation.[5] Because Molko and Leal were allegedly misled into participating in a process "by which they were stripped of their independent judgment," (Ap-

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[1] The *bona fides* of the Unification Church are not at issue in this litigation. Nor are they reasonably open to challenge.

[2] Were this a typical religious fraud case, in which a State sought to regulate a deceptive financial scheme masquerading as religious practice, *see e.g., United States v. Snowden*, 770 F.2d 393, 398 (4th Cir. 1985) (Ervin, J. concurring); *Cohen v. United States*, 297 F.2d 760 (9th Cir. 1962), *amici* would not be filing this brief.

[3] *Cf. United States v. Kozminski*, 108 S. Ct. 2751 (1988) (no federal cause of action for involuntary servitude absent threat of physical force or restraint, or abuse of legal process).

[4] Molko and Leal do not claim any damages from their exposure to the Unification Church conversion practices during the brief period prior to the time they were informed of the nature and purposes of the Church.

[5] The court used the terms "brainwashing" and "coercive persuasion" interchangeably. (Appendix 13a n.11).

pendix 13a n.12), their ultimate decisions to affiliate with the Church were, in the court's view, not freely made. All alleged harms were thus viewed as flowing proximately from the alleged initial deceptions that drew them into the "brainwashing" milieu. Without "coercive persuasion," no actionable harm could have resulted on the instant facts, even if respondents were initially and temporarily misled about the nature and purposes of the Church.[6] They were fully informed well before they decided to join.

What the California Supreme Court pejoratively labelled "coercive persuasion" is nothing less than the complex of ritual and practice comprising the conversion experience of the Unification Church members—witnessing, the coming together for prayer and theological investigation, silent meditation, lectures on scripture, song, and other devotions to God. Purporting to cloak its assumptions in the neutral abstractions of science, the court described this core religious activity as "creation of a controlled environment that heightens the susceptibility of the subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure and a clear assertion of authority and dominion." (Appendix 14a (quoting *Peterson v. Sorlein*, 229 N.W.2d 123, 126 (Minn. 1981))). The court was willing to assume that these "techniques" could have the pernicious effect of "induc[ing] a subject's unyielding compliance," even absent any use or threat of force, or confinement. *Id.* On the basis of that assumption, the court held that imposition of tort liability for these practices was necessary to advance the compelling state in-

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[6] As the dissent observed, "the gist of appellants' fraud complaint was that the conversion was achieved by actionable 'brainwashing.'" (Appendix 46a (Anderson, J., dissenting in part)). At one point the court explicitly acknowledged that "coercive persuasion" was the gravamen of the cause of action brought by Molko and Leal. *See* Appendix 14a.

terest of preventing "brainwashing." (Appendix 17a-28a).

This ruling directly implicates the Free Exercise Clause of the First Amendment,[7] which protects not only the right to hold religious beliefs but also "the right to preach, proselyte, and perform other similar religious functions" that propagate, sustain, and deepen belief. *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (Burger, C.J.) (plurality opinion). *See also Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). Under no circumstances may a State directly infringe religious practices without, at a minimum, *proving* that the purported threat posed by the practices is real and substantial.[8] The professional consensus of *amici* is that the allegation of "coercive persuasion" at issue in this case has no scientific validity and has not been accepted by the relevant professional and scientific communities. It thus provides no basis for subjecting religious organizations to tort liability for conversion practices.

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[7] *See Cantwell v. Connecticut*, 310 U.S. 296 (1940) (Free Exercise guarantee applicable to the States through the Fourteenth Amendment).

[8] It is unlikely that the State could ever regulate sincere, nonviolent religious practices to protect interests in emotional well-being. In circumstances analogous to those of the present case, the Ninth Circuit refused to permit imposition of tort liability upon the Jehovah's Witnesses for their doctrinal practice of "shunning" former members. The court held that protection from "intangible" emotional and psychological harms, though important, was ultimately not a sufficiently compelling government objective to permit the prohibition of "shunning" as a religious practice. *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, 819 F.2d 875, 883 (9th Cir.), *cert. denied*, 108 S. Ct. 289 (1987).

Other courts have held that the conversion practices of a religious group—so long as they do not involve violence or physical confinement—are simply not subject to regulation because regulation inevitably results in a deep intrusion on, and unavoidable evaluation of, the legitimacy of religious belief. *See, e.g., Lewis v. Holy Spirit Association*, 589 F. Supp. 10 (D. Mass. 1983); *Katz v. Superior Court*, 73 Cal.App.3d 952 (1977).

REASONS FOR GRANTING THE WRIT

Amici submit that review of the decision of the California Supreme Court is warranted because (1) the court's willingness to credit an allegation of "coercive persuasion" or "brainwashing" conflicts with applicable decisions of this Court demanding searching examination of "compelling state interests" proffered to justify infringements on the exercise of religion, *see Wisconsin v. Yoder*, 406 U.S. at 220; and (2) the California Supreme Court endorsed a scientifically implausible claim of state interest that gravely threatens core religious values.

I. THE DECISION BELOW CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT REQUIRING STRICT SCRUTINY OF PURPORTED "COMPELLING STATE INTERESTS" PROFFERED AS JUSTIFICATIONS FOR REGULATING CORE RELIGIOUS PRACTICES.

When a State infringes core religious practices of the type at issue in this case, a reviewing court "must searchingly examine the interests the State seeks to promote." *Wisconsin v. Yoder*, 406 U.S. at 220. The State may not rely on bald assertions of hypothetical need for infringement, but must justify its claims with "*proof*." *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136, 107 S. Ct. 1046, 1049 (1986) (emphasis added).[9] A State's asserted compelling interest cannot be credited if it is "highly speculative," unsupported by "specific evidence," or rests "primarily on . . . mistaken assumptions." *Yoder*, 406 U.S. at 222, 224.

The California Supreme Court simply ignored these unmistakable directives. The court did not "searchingly

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[9] *See also Goldman v. Weinberger*, 475 U.S. 503, 106 S. Ct. 1310, 1325 (1986) (O'Connor, J., dissenting) ("government must show that the opposing interest it asserts is of special importance . . . [and] that the interest asserted will *in fact* be substantially harmed" (emphasis added)).

examine" the validity of the compelling reasons offered for infringing petitioner's religious practices. Instead, by deciding that the possibility of "coercive persuasion" was a question of fact to be left to the jury, the court effectively abdicated its constitutional responsibilities.

Even if the court were correct—and it is not—that a genuine dispute existed in the relevant professional communities over the validity of "coercive persuasion," the court erred grievously in leaving this question to the jury. The issue was properly raised on summary judgment challenging the constitutionality of imposing tort liability for religious practices. It was incumbent upon the court to decide whether a compelling state interest supported the effort to impose tort liability. This dispute does not turn on the particular adjudicative facts of the present case, but on the social or legislative "fact" of the scientific validity *vel non* of the allegation of "coercive persuasion." [10]

Courts routinely make judgments of this type as an evidentiary matter in deciding whether expert scientific testimony has gained sufficient professional acceptance to warrant its submission to the jury as a basis for inference. *See Frye v. United States*, 293 F.2d 1013, 1014 (D.C. Cir. 1923). Such a judgment is crucial to resolving the core constitutional issue in this case, and should have been made at summary judgment. *Cf.* Monahan, *First Amendment Due Process*, 83 Harv. L. Rev. 518, 529 (1970) ("The jury cannot be expected to be sufficiently

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[10] Neither California's legislature nor its executive has enacted any laws or sought any enforcement action to vindicate the purported interest; the state interest posited below was derived solely from the common law. Accordingly, the Court had no legislative or executive findings on which to rely in finding this interest compelling. In the absence of such findings, the need for careful judicial scrutiny of the purported compelling interest is particularly acute.

As Justice O'Connor's opinion in *Kozminski* makes clear, the federal law of involuntary servitude requires a showing of force, threats or confinement. 108 S. Ct. at 2759.

sensitive to First Amendment interests involved. . . . First Amendment considerations should be read to confine, not expand the jury's role"). The California Supreme Court thus had both the competence to consult relevant social authority to resolve the issue, and the duty to do so. *See generally* Monahan & Walker, Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law, 134 U. Pa. L. Rev. 477 (1986).[11]

II. THE SCIENTIFIC EVIDENCE PURPORTEDLY JUSTIFYING THE REGULATION OF RELIGIOUS PRACTICE IMPOSED BY THE COURT BELOW CANNOT SURVIVE SEARCHING SCRUTINY.

A strong consensus of relevant professional opinion decisively rejects the validity of the allegation of "coercive persuasion" as applied in this case. *First*, the underlying principles and scholarship from which the "coercive persuasion" allegation purports to be drawn do not even remotely support application of the theory here. *Second*, the claim that Molko and Leal were somehow deprived of their free will has no empirical support, and has been consistently refuted when subjected to scientific scrutiny. This unsupported allegation cannot "prove" that a compelling state interest is threatened by the Church's practices. *Third*, to the extent there has been any claim of empirical evidence in support of the allegation of "coercive persuasion" in the present context, that "evidence" is so riddled with methodological flaws as to be utterly unreliable.

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[11] Furthermore, the California Supreme Court's approach creates a significant risk that inexpert lay jurors will defer uncritically to testimony cloaked in a mantle of scientific expertise. That risk is particularly acute in this case. Prevailing hostility toward the Unification Church, and repeated allegations in the media of brainwashing, will in all probability incline lay jurors to accept the purportedly scientific claims of "coercive persuasion" that confirm prevailing hostile views.

A. As Applied In the Context of this Case, the "Coercive Persuasion" Hypothesis Is Wholly Divorced from its Purported Theoretical Basis.

The description of "systematic manipulation of social influences" as "coercive persuasion"—offered by Respondents' experts, Drs. Singer and Benson—purports to be based on studies of American prisoners during the Korean War. Seeking to explain why some POWs appeared to adopt the belief system of their captors, the popular press advanced the theory that the free will and judgment of these individuals had been overborne by sophisticated techniques of mind control or "brainwashing."[12] Several reputable scientists concluded that—under conditions of confinement involving extreme physical hardship, isolation for extended periods, deprivation of necessities, physical torture and threats of death—some individuals might be temporarily induced to accept belief systems antithetical to those they previously held. *See* James, *Brainwashing: The Myth and the Actuality*, 61 Thought 241 (1986).

The California Supreme Court cited this literature to show that "coercive persuasion" exists and may have occurred in this case. (Appendix 14a-15a). But the authors of the foundational scholarship—Robert Lifton and Edgar Schein—unequivocally rejected the possibility of "brainwashing" of the type alleged in this case. They reached the far more circumscribed conclusion that a small percentage of POWs were induced to alter beliefs and attitudes when "subjected to unusually intense and prolonged persuasion in a situation from which they could not escape." E. Schein, *Coercive Persuasion* 18 (1961). Under conditions of extreme cruelty, some individuals were found to be willing to adopt temporarily the attitudes and beliefs their captors urged on them, in the hope that by acquiescing they could convince their captors to ameliorate the hardships. Even under such extreme pres-

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[12] *E.g.*, E. Hunter, *Brainwashing in Red China* (1951).

sures, however, conversion to communist ideology was rare. Schein concluded that "considering the effort devoted to it, the Chinese program [of coercive persuasion] was a failure." Schein, *The Chinese Indoctrination Program for Prisoners of War: A Study of Attempted "Brainwashing"* 332, *in* Readings in Social Psychology (Macoby ed. 1958). Furthermore, some of those who experienced temporary conversions were predisposed to the new value system imposed on them. E. Schein, *Coercive Persuasion* at 202.[13]

Most important, a crucial factor distinguishes the conversion practices of new religious movements, and similar groups, from Korean War POW camps: the complete absence of physical confinement, torture, death threats and severe physical deprivation. Physical coercion was found to be essential to the success of any "involuntary" thought reform process. *Id.* at 125-127; R. Lifton, *Thought Reform and the Psychology of Totalism* 13, 65-85 (1961). Lifton and Schein concluded that, except for the physical coercion, the "thought reform" imposed on POWs had much in common with the "influence processes" of myriad mainstream social institutions such as college fraternities, Catholic orders, the armed services, Alcoholics Anonymous and some mainstream Christian denominations. E. Schein, *Coercive Persuasion* at 260-282; R. Lifton, *Thought Reform* at 435-451.[14]

Thus, there is no support for equating the physically brutal "mind control" techniques imposed on Korean War

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[13] *See generally United States v. Fleming*, 7 U.S.C.M.A. 543, 23 C.M.R. 7 (1957), a military prosecution of an Army Major for collaborating with the enemy in which the conditions of confinement and treatment of Korean POWs are described in detail.

[14] For a more comprehensive analysis of the inapplicability of the work of Lifton and Shein to new religious movements, *see* Brief Amicus Curiae of Society for the Scientific Study of Religion, *et al.* in *George v. International Society for Krishna Consciousness of California*, No. D007153 (Cal. Ct. App., 4th District).

POWs with the conversion practices of *bona fide* religious groups such as the Unification Church. As Judge Krupansky stated in his concurring opinion in *United States v. Kozminski*:

> "the brainwashing techniques employed by the Chinese as studied by Dr. Lifton were scientifically implemented, and scientifically monitored around the clock. The techniques were professionally structured into a planned, systematic, progressive program calculated to totally pervert and/or destroy an individual and to change his behavior and his beliefs. Essential to effective metamorphosis of the prisoner was *an environment of physical captivity, a realization of the futility of escape or rescue, and the use of force or the ever-present threat of force and even death.*"

821 F.2d 1186, 1204 (6th Cir. 1987) (emphasis in original), *aff'd*, 108 S. Ct. 2751 (1988).

For this reason, the consensus view of scholars repudiates the effort to extend the POW mind control hypothesis to the context of new religious movements. *E.g.*, James, *Brainwashing*, *supra*, at 254 ("it is absurd to compare this to the fear of death in prisoners held by the Chinese and North Koreans"); E. Barker, *The Making of a Moonie* 134 (1984) (comparison "cannot be taken seriously"); Saliba, *Psychiatry and the New Cults: Part 1*, 7 Academic Psychology Bull. 51 (1985); Anthony & Robbins, *New Religions, Families and "Brainwashing" in* In Gods We Trust 263, 264-265 (T. Robbins & D. Anthony eds. 1981). Because the undisputed facts of this case lack the very element that Lifton and Schein concluded was the *sine qua non* of "coercive persuasion," simple invocation of their works provides no valid support for assuming that new religious movements pose a genuine danger of "brainwashing" potential converts.[15]

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[15] Lifton himself made this clear in a recent publication: "From my perspective, then, cults are not primarily a psychiatric problem, but a social and historical issue. . . . I do not think that pattern is

There is, furthermore, no evidence to suggest that anything can substitute for physical coercion in the process of "coercive persuasion." To the contrary, all available research refutes any such claim.

B. As Applied To New Religious Movements, The Theory of Coercive Persuasion Is Not Scientific.

Scientific inquiry demands "the pursuit of objective knowledge gleaned from observation." J. Neale and R. Liebert, *Science and Behavior: An Introduction to Methods of Research* 9-10 (1980) (Hereafter *Science and Behavior*); J. Monahan and L. Walker, *Social Science in Law* 33-34 (1985) (hereafter *Social Science in Law*). Refutability is a *sine qua non* of scientific validity. Platt, *Strong Inference*, 146 Science 347, 353 (1964). If a claim is not in principle capable of being refuted by empirical means, then it cannot be called a scientific statement. Valid investigatory methods are not confined to pristine &laboratory conditions, but the validity of any causal explanation depends crucially on its empirical foundation and refutability.

From a scientific point of view, it is exceedingly difficult to evaluate allegedly coercive acts by measuring their effect on some ineffable human quality called free will. To do so, a scientist would have to define what free will is, describe how the environment affects it, and decide when the effects become so great that free will can be said to be overborne.[16] Even if such an investigation

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best addressed legally. . . . Not all moral questions are soluble legally or psychiatrically, nor should they be. I think psychiatrists and theologians have in common the need for a certain restraint here, to avoid playing God and to reject the notion that we have anything like a complete solution that comes from our points of view or our particular disciplines." R. Lifton, The Future of Immortality and Other Essays for a Nuclear Age 218-219 (1987).

[16] *See* Balch, *What's Wrong With the Study of New Religions And What We Can Do About It*, in Scientific Research and New Reli-

were possible, *no* such investigation has been undertaken to demonstrate the validity of the allegation of "coercive persuasion" of the kind at issue in this case.

There is, however, an asymmetry to what is methodologically permissible within the scientific enterprise. Whether or not a claim or theory is capable of being demonstrated valid, one can sometimes *refute* a theory because the consequences that follow logically from it can be shown to be untrue. If one looks at only an *individual* who has responded positively to a particular environment, one cannot identify the removal of free will as the reason for the response. If, however, most people were *not* to respond in the way in which a particular environment was attempting to influence them, then one *could* conclude that the argument that the environment had removed their free will is not valid. Evaluated in this way, the allegation of "coercive persuasion" at issue in this case has no plausibility.

A significant and *uncontradicted* body of empirical social science evidence demonstrates that the overwhelming majority of persons who undergo the process described by the court below as "coercive persuasion," even for a period of weeks, choose *not* to affiliate with the new religious movement, or other group, using the purportedly coercive techniques. For example, several studies of Unification Church recruitment workshops reveal that, on the average, fewer than one in ten of those who get as far as attending a Church workshop agree to join the Church, and fewer than one in twenty remain with the Church for two years. *E.g.*, E. Barker, *The Making of a Moonie* at 146 (fewer than ten percent of more than one thousand persons studied in 1979 agreed to join the

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gions 25 (B. Kilbourne, ed. 1985) (as a descriptive label, "brainwashing . . . is essentially useless because it depends on untestable assumptions about the slippery issues of freedom and control") (hereafter *The Study of New Religions*).

Church for more than one week and fewer than four percent remained affiliated for more than two years); Galanter, *Psychological Induction into the Large Group: Findings from a Modern Religious Sect*, 137 Am. J. Psychiatry 1575 (1980) (fewer than nine percent agreed to join for more than one week and fewer than six percent remained affiliated for more than one year).[17]

The only conclusion that can scientifically be drawn from this uncontradicted evidence is that the conversion practices at issue in this case are *not coercive*. These practices not only fail to convert at least 90% of those subjected to them, but actually dissuade the overwhelming proportion. Thus, some other variable—either alone or interacting with the Church's conversion practices—must explain individual decisions to join the Church. E. Barker, *The Making of a Moonie* at 144-45. But even if one could isolate a configuration of human qualities that differentiates those who decide to join the Church from those who decide not to join, such a showing would not justify imposing legal liability. Traits common to such a group might well be those—such as a questioning nature or a desire for community—that predispose persons toward religious experience. For such persons, the decision to join the Church might be quite rational. The ability to persuade them, even with extraordinary skill, is not alone a reason for imposing legal liability. A court should consider attaching legal consequences to persuasive efforts that are not inherently coercive only if something about the common traits of those persuaded calls for special legal protection. No such showing has been made.[18]

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[17] *See also* Bird & Reimer, *Participation Rates in the New Religious Movements*, 22 J. for the Scientific Study of Religion 1, 1-21 (1982); S. Levine, *Radical Departures* (1984) (over 90% of those studied who joined new religious movements departed within two years).

[18] To the contrary, extant evidence demonstrates that the qualities that dispose individuals toward joining the Church are not

C. The Methodological Foundations For The Theory Of Coercive Persuasion Are Nonexistent.

To be of use to courts, scientific analysis not only must rest on an empirical foundation, but also must produce trustworthy conclusions.[19] *See generally*, Monahan & Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 U. Pa. L. Rev. 477 (1986). Scientific evidence rejecting the "coercive persuasion" allegation is voluminous, well-documented, and published in numerous books and leading, refereed professional journals. *See supra* pages 14, 17 and *infra* pages 22-26. *Amici* are aware of *no* scientific studies supporting the hypothesis that—absent physical force, prolonged confinement or serious deprivation—the "creation" and manipulation "of a controlled environment" can work to deprive an individual of free will. (Appendix 14a). The sole support for this allegation comes from a small contingent of mental health professionals, two of whom—Drs. Singer and Benson—submitted expert affidavits in this case. These affidavits encapsulate the en-

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qualities of vulnerability. Barker, *Making of a Moonie* at 235 ("[i]t is precisely those whom one might have expected to be the most vulnerable to persuasion who turn out to be the nonjoiners"). *Accord* Richardson, *The Active vs. Passive Convert: Paradigm Conflict in Conversion/Recruitment Research*, 24 J. for the Scientific Study of Religion 163 (1985). Other studies refute the suggestion that Church members are in any way impaired in their capacity for rational thought and choice. *E.g.*, Ungerleider & Wellisch, *Coercive Persuasion (Brainwashing), Religious Cults, and Deprogramming*, 136 Am. J. Psychiatry 279, 281 (1979) ("No data emerged from intellectual, personality, or mental status testing [of more than 50 'cult members'] to suggest that any of these subjects are unable or even limited in their ability to make sound judgments and legal distinctions as related to their persons and property").

[19] For practitioners of the scientific method, trustworthiness is described in terms of two components: reliability and validity. A particular methodology is reliable to the extent it generates a consistent series of results. A methodology is valid to the extent it generates accurate measurements of what it purports to measure.

tirety of the "scientific" basis for crediting the coercive persuasion allegation in this case.

The conclusions that Drs. Singer and Benson draw are based on a relatively few interviews with former Church members and their families, including Molko and Leal. Singer Declaration at 2-3, R.752-753; Benson Declaration at 1, R.765. For most of these interviews, no written record exists. Singer Deposition in *Dole v. Holy Spirit Association*, *supra*, at 85. *The collected information has never been compiled systematically, analyzed statistically, or published in a reputable scientific journal.* As a result, any conclusions drawn from the data must be taken on faith. Absent publication of supporting evidence, and persuasive refutation of the substantial body of published findings rejecting the "coercive persuasion" claim, the allegation that these experts advance—and on which the California Supreme Court relied—cannot be considered reliable or valid by the relevant professional communities.[20] *See* Neale & Liebert, *Science and Behavior*, *supra*, at 13-14 ("The scientific approach requires that all claims be exposed to systematic probes"). And to the extent that the allegation can be said to have any empirical foundation at all, that foundation is so methodologically inadequate as to be worthless.

1. *The Sources of Information Purporting To Support the Hypothesis Are Not Impartial.*

The conclusions of Drs. Singer and Benson are based predominantly on information drawn from Unification Church members, most of whom had been forcibly removed from the Church environment. Common sense suggests—and scientific analysis confirms—an inevitable bias in these sources. Individuals who have left a movement under such circumstances might be expected to provide hostile accounts of their experience, and to seek self-

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[20] Nor ought they be the basis upon which the religious practices of a religious organization are placed on trial before a potentially hostile jury. *See supra* note 11 and accompanying text.

serving rationalizations. By learning to explain affiliation as brainwashing, former members can place responsibility for their past actions on the Church rather than on themselves.

A persuasive and uncontradicted body of recent empirical research demonstrates this systemic bias in the data of Singer and Benson. Most of the individuals—including Molko and Leal—interviewed by Drs. Singer and Benson did not depart the Church voluntarily; they were kidnapped or abducted into leaving and were subsequently "deprogrammed" or counseled. Several recent studies show that individuals who have been "deprogrammed" are more hostile, and claim "coercive persuasion" far more often, than do those who leave such organizations of their own volition. Indeed, although most "deprogrammed" individuals claim they were brainwashed, almost no one among the far larger numbers who depart *voluntarily* makes such a claim. *See* Lewis, *Reconstructing the "Cult" Experience*, 46 Sociological Analysis 151 (1986) (survey of 154 former cult members, including 42 former Unification Church members) (hereafter *Reconstructing the Cult Experience*); Wright, *Post-Involvement Attitudes of Voluntary Defectors from Controversial New Religious Movements*, 23 J. for the Scientific Study of Religion 23 (1984) (hereafter *Post-Involvement Attitudes*); Galanter, *Unification Church ("Moonie") Dropouts: Psychological Readjustment After Leaving A Charismatic Religious Group*, 140 Am. J. Psychiatry 984, 986 (1983) (study of 66 former Unification Church members); Solomon, *Integrating the Moonie Experience: A Survey of Ex-Members of the Unification Church*, in In Gods We Trust 275 (1981) (study of 100 former Unification Church Members) (hereafter *Survey of Ex-Members*). *See also* Richardson, van der Lans & Derks, *Leaving and Labelling: Voluntary and Coerced Disaffiliation From Religious Social Movements*, 9 Research in Social Movement, Conflicts and Change 97 (1986).

Given the importance of the brainwashing explanation in the deprogramming process[21] and the extreme frequency with which deprogrammed former members—but not former members who departed *voluntarily*—claim coercive persuasion, it may well be that Drs. Singer and Benson have been observing nothing more than the effects of *deprogramming*, and not the effects of the Church's conversion practices.[22]

2. *There is No Relevant Evidence That Church Membership Causes Any Harm That Would Justify The Imposition Of Tort Liability.*

The conclusion of Drs. Singer and Benson that Church membership causes psychological harm has no validity because the methodology fails to meet basic standards for scientific research; it is sheer speculation.[23] Because they have not shown a higher incidence of the observed maladies among former Church members than among similar population groups, they have no basis even for claiming

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[21] Studies have observed that "presentation of the brainwashing ideology appears to be one of the most essential components of the deprogramming process." Lewis, *Reconstructing the Cult Experience*, at 157; *accord Solomon, Survey of Ex-Members*, at 289. *See also* E. Barker, *Making of a Moonie* at 129.

[22] Drs. Singer and Benson have been criticized on precisely this ground. *E.g.*, Barker, *Making of a Moonie* at 128 ("psychologists . . . who rely so heavily (often exclusively) on such evidence are neglecting some very basic principles of research"); Balch, *The Study of New Religions* at 30-32; Lewis, *Apostates* at 22; Richardson *et al., Leaving and Labelling* at 176 & n.8; Richardson, Methodological Considerations in the Study of New Religions, *in Divergent Perspectives on New Religions* 134 (B. Kilbourne ed. 1985).

[23] Several commentators have criticized Drs. Singer and Benson for this reason. *See, e.g.*, Melton & Moore, *The Cult Experience* at 57; Saliba, *Psychiatry and the New Cults* at 45-56; Kilbourne & Richardson, *Psychotherapy and New Religions* at 246 n.1; Balch, *The Study of New Religions*, at 29; E. Barker, *The Making of A Moonie* at 132.

a correlation between Church membership and psychological harm.

But even if a correlation were shown, such a showing would not justify the inference that Church membership caused the observed harms. "[W]hen a social scientist observes a correlation between two variables . . ., it is often tempting to simply assume that the relationship is causal in nature. . . . This assumption is unsound whenever the observed relationship can reasonably be explained in a different way. Thus, [c]ausal inferences require research designs that can control for plausible rival hypotheses." Neale & Liebert, *Science and Behavior*, *supra*, *quoted in* Monahan & Walker, *Social Science in Law*, *supra*, at 54-55. In this case, there are at least four obvious alternative explanations for any emotional and psychological injuries purportedly found in former Church members: (i) the observed condition might have preceded membership in the Church; (ii) both the observed condition and Church membership might be explained by a third factor; (iii) the observed condition might have been caused by deprogramming; (iv) the observed condition might be the product of readjustment to life after membership in the Church. Because Drs. Singer and Benson have not excluded any of these alternative explanations, they have no basis for concluding that Church membership causes harm.

Not surprisingly, methodologically superior studies do not support the allegation of psychological harm. A significant body of evidence suggests that membership in new religious organizations such as the Unification Church tends to relieve psychological distress. *E.g.*, Deutsch and Miller, *A Clinical Study of Four Unification Church Members*, 140 J. Am. Psychiatry 767, 769 (1983); Galanter, *Charismatic Religious Sects and Psychiatry: an Overview*, 139 Am. J. Psychiatry 1539 (1982). *See also* Melton & Moore, *The Cult Experience*, *supra*, at 42; T. Ungerleider, *The New Religions* 15-16

(1979). *Cf.* Griffith, Young & Smith, *An Analysis of the Therapeutic Elements in a Black Church Service*, 35 Hosp. and Com. Psychiatry 464 (1984) (similar findings); Richardson, Psychological and Psychiatric Studies of New Religions *in Advances in the Psychology of Religion* (Brown, ed. 1985).

D. The Theory of Coercive Persuasion On Which The The Court Below Relied Is Simply A Negative Value Judgment In Scientific Garb.

Amici have demonstrated that the allegation of "coercive persuasion" on which the California Supreme Court relied has no specific legitimacy. It uses the language of science to cloak an attack on religious liberty. At bottom, it is little more than a refusal to accept that persons could freely choose to adopt the belief system and way of life of that Church. *See* Robbins, *"Uncivil" Religions and Religious Deprogramming*, 61 Thought 277, 280 (1986) (mind-control hypotheses "frequently entail sinister clinical interpretations of behaviors and processes which might otherwise be seen merely as indicative of intense religious commitment"). It is, in other words, simply a layperson's negative value judgment about the beliefs and practices of the Unification Church. *See* Anthony and Robbins, *New Religions, Families, and "Brainwashing"*, in In Gods We Trust 263, 266-267 (1981); Balch, *The Study of New Religions*, *supra*, at 25.

Permitting tort liability to be imposed on the basis of the "coercive persuasion" allegation poses a serious risk of prohibiting sincere, nonviolent religious practices because of nothing more than majoritarian antipathy. There is no scientific basis for concluding that *any* government interests—much less a *compelling* interest—would be served by permitting tort liability for sincere, nonviolent conversion practices. Indeed, in all likelihood majoritarian antipathy accounts for the California Su-

preme Court's uncritical acceptance of the purportedly "scientific" claims of brainwashing at issue. *Cf.* S. Gould, *The Mismeasure of Man* (1981). Accordingly, this Court should grant certiorari to eliminate the extreme threat to religious liberty, and to the integrity of scientific research, posed by the decision below.

CONCLUSION

For all the foregoing reasons, and for those set forth in the petition for certiorari, the petition for certiorari should be granted.

Respectfully submitted,

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